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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,271	03/25/2004	Ruben Garcia Fabrega	201474-9016	6924

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EXAMINER	
HOPKINS, ROBERT A	
ART UNIT	**PAPER NUMBER**
1724	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/809,271	FABREGA ET AL.	
	Examiner	Art Unit	
	Robert A. Hopkins	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *30-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *30-32 and 35-58* is/are rejected.

7)☒ Claim(s) *33 and 34* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5-10-04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 35-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 recites "said intermediate part". There is a lack of antecedent basis in previous claim limitations for "said intermediate part". Correction is requested. Claims 36-55 depend on claim 35 and hence are also rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30 and 31 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Furner et al(6610254).

Furner et al teaches a device for air freshening through a membrane with an adjustable degree of evaporation, wherein the air flow cooperates in the evaporation of a volatile substance, comprising a container(gel cartridge 32 in figure 6) of at least one type of volatile substance, a strip of vapor permeable material(38 in figure 7) in contact with the volatile substance(40), the strip being exposed to the air flow, a casing(2 in

figure 2) supporting the container and the vapor permeable strip and keeping the container and vapor permeable strip under the influence of the air flow, and adjustment means(column 12 lines 34-45) for adjusting the degree of evaporation of the substance by means of the control of the air flow acting on the strip. Furner further teaches wherein the vapor permeable strip is a liquid impermeable evaporation strip adhered to the container of the volatile substance forming an air freshening unit.

Examiner notes that claim 30 is an apparatus claim, therefore the patentability is based on the structural elements of the device, and not on external elements in cooperation with the device, such as the location or possible use of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElfresh et al(5527493) taken together with Furner et al(6610254).

McElfresh et al teaches a device for air freshening through a membrane with an adjustable degree of evaporation, wherein the air flow cooperates in the evaporation of a volatile substance, comprising a container(11 in figure 3) of at least one type of volatile substance, a strip of vapor permeable material(20) in contact with the volatile substance(17), the strip being exposed to the air flow, a casing(10 in figures 1 and 2) supporting the container and the vapor permeable strip and keeping the container and

vapor permeable strip under the influence of the air flow. McElfresh et al is silent as to adjustment means for adjusting the degree of evaporation of the substance by means of the control of the air flow acting on the strip. Furner et al teaches a device for air freshening through a membrane with an adjustable degree of evaporation, wherein the air flow cooperates in the evaporation of a volatile substance, comprising a container(gel cartridge 32 in figure 6) of at least one type of volatile substance, a strip of vapor permeable material(38 in figure 7) in contact with the volatile substance(40), the strip being exposed to the air flow, a casing(2 in figure 2) supporting the container and the vapor permeable strip and keeping the container and vapor permeable strip under the influence of the air flow, and adjustment means(column 12 lines 34-45) for adjusting the degree of evaporation of the substance by means of the control of the air flow acting on the strip. It would have been obvious to someone of ordinary skill in the art at the time of the invention to provide an adjustment means in the device of McElfresh et al to permit more or less rapid evaporation of the content of the volatile substance, in accordance with the personal preference or need of the consumer(column 12 lines 37-39 of Furner et al).

Furner further teaches wherein the vapor permeable strip is a liquid impermeable evaporation strip adhered to the container of the volatile substance forming an air freshening unit.

Furner et al is silent as to the sliding plastic plate having at least one window as required in claim 32 for overlap with the openings (14) in the casing (10) of McElfresh et al. However, examiner respectfully submits that adjustment mechanisms for air

freshener devices which include windows on both the slider element and the casing are very well known, therefore , it would have been obvious to someone of ordinary skill in the art at the time of the invention to provide at least one window on the sliding plastic plate as taught by Furner in order to provide for a fully adjustable and controllable airflow acting on the strip of McElfresh et al.

Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElfresh et al(5527493) taken together with Furner et al(6610254).

McElfresh et al teaches a method for adjustably evaporating a volatile substance comprising putting the volatile substance(17) in contact with a strip of vapor permeable material(20), projecting an air flow on the strip(when attached to automotive air flow vent in figures 7 and 11). McElfresh et al is silent as to controlling the air flow acting on the strip. Furner et al teaches a volatile substance in contact with a strip of vapor permeable material, the combination of the volatile substance and strip of vapor permeable material within a casing , and a step of sliding a plastic plate in relation to openings in the casing for controlling the amount of vapor released from the casing. It would have been obvious to someone of ordinary skill in the art at the time of the invention to provide a step of controlling the air flow acting on the strip of McElfresh et al to permit more or less rapid evaporation of the content of the volatile substance, in accordance with the personal preference or need of the consumer(column 12 lines 37-39 of Furner et al).

Furner et al further teaches wherein control of the air flow acting on the strip is carried out by modifying the area through which the air flow must pass prior to acting on the area.

Furner et al is silent as to the sliding plastic plate having at least one window as required in claim 58 for overlap with the openings (6) in the casing (2). However, examiner respectfully submits that adjustment mechanisms for air freshener devices which include windows on both the slider element and the casing are very well known, therefore , it would have been obvious to someone of ordinary skill in the art at the time of the invention to provide at least one window on the sliding plastic plate as taught by Furner in order to provide for a fully adjustable and controllable airflow acting on the strip of McElfresh et al.

Allowable Subject Matter

Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 33 recites "wherein the adjustment means comprise an intermediate part and a rear part overlapped and with relative rotational capability between one another, ...". Furner et al teaches an adjustment means which translates linearly with respect to the casing(2) for adjustment of the degree of evaporation. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to substitute an adjustment means which comprise an intermediate part and a rear part overlapped

and with relative rotational capability between one another because Furner et al does not suggest such a modification. Claim 34 depends on claim 33 and hence would also be allowable upon incorporation of claim 33 into claim 30.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Hopkins whose telephone number is 571-272-1159. The examiner can normally be reached on Monday-Friday, 7am-4pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ROBERT A. HOPKINS
PRIMARY EXAMINER
A.U. 1724

Rah
November 10, 2005